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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~682~~ 106

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE

vs.

I. B. KOCH

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED MAY 8, 1930

I

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 882

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE

vs.

I. B. KOCH

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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112884—30

1 United States Circuit Court of Appeals for the Ninth Circuit

FRED O. GOODELL, COLLECTOR OF INTERNAL REVENUE, Appellant
vs.
I. B. KOCH, APPELLEE
No. 5794

Appeal from the United States District Court for the District of Arizona

CERTIFICATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, UNDER SECTION 239 OF THE JUDICIAL CODE

Statement of facts

(Filed April 28, 1930)

I. B. Koch and Margaret E. Koch are husband and wife and both are citizens of the United States. For more than fifteen years prior to October 15, 1928, they have maintained their domicile in the State of Arizona. Neither husband nor wife had any property at the date of their marriage and neither has since acquired any property by gift, devise, or descent. All property, real or personal, now owned by them, including the income hereafter mentioned is, and during the year 1927 was, their community property under the laws of the State of Arizona. During that year the gross income of the community amounted to $12,042.45, of which sum $12,000.00 represented salary received by the husband and $42.45 represented interest from certain bank deposits, notes, and corporate stocks which the husband and wife had accumulated during the marriage and prior to 1927. After making the deductions allowed by law, which left a balance of $11,535.91, husband and wife made separate returns, each reporting one-half, or $4,767.96, as their respective incomes. Upon the income so reported the tax was $45.81, each, which each of them has fully paid, and it is admitted that all income taxes due from either husband or wife for the year 1927 has been fully paid if, as a matter of law, they had a lawful right to make such separate returns under the provisions of sections 210 and 223 (b) of the revenue act of 1926. 44 Stat. 21.

2 After the husband had filed his income tax return for the calendar year 1927, as above set forth, the Commissioner of Internal Revenue upon audit and examination determined that his return was incorrect in that all of the community income, both that reported by the husband and that reported by the wife, should have been reported by the husband alone, and the tax calculated upon the one net income of $11,535.91 instead of two incomes of $5,767.96 each. Accordingly, the Commissioner of Internal Revenue, under section 274 of the revenue act of 1926, determined against the husband a deficiency in income tax for the year 1927 amounting to $102.06. The husband

waived the opportunity afforded him of appealing to the Board of Tax Appeals and, upon the subsequent assessment of said additional tax by the Commissioner of Internal Revenue, he thereafter, on October 9, 1928, paid to Fred O. Goodell, collector of internal revenue for the District of Arizona, said additional tax plus interest in the sum of $3.26, a total of $105.32. This action was thereupon instituted by the husband to recover the amount of the additional tax thus imposed and collected. From a judgment in favor of the plaintiff for the amount claimed the collector of internal revenue has appealed.

Questions certified

For a proper decision of the above-entitled cause, now pending on appeal and duly submitted for consideration, instructions are respectfully requested of the Supreme Court on the following questions of law, concerning which we are in doubt, viz.:

(1) Under the provisions of §§ 210 and 223 (b) of the Revenue Act of 1926 must the entire community income of a husband and wife domiciled in Arizona be returned and the income tax thereon paid by the husband?

(2) Has the wife under §§ 3848 and 3850, Revised Statutes of Arizona, 1913, such an interest in the community income that she should separately report and pay tax on one-half of such income?

Dated April 28, 1930.

FRANK H. RUDKIN,
FRANK S. DIETRICH,
CURTIS D. WILBUR,
United States Circuit Judges.

[File indorsement omitted.]

3 A true copy.
Attest: April 29, 1930.
[SEAL.] PAUL P. O'BRIEN, *Clerk.*

[Indorsement on cover:] File No. 35,013. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 882. Fred O. Goodell, Collector of Internal Revenue, vs. I. B. Koch. Filed May 8, 1930. File No. 35013.

U. S. GOVERNMENT PRINTING OFFICE: 1930